

Assembly Bill No. 843

Passed the Assembly September 6, 2005

Chief Clerk of the Assembly

Passed the Senate August 29, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 22251 of, and to add Section 22253.1 to, the Business and Professions Code, relating to tax preparers.

LEGISLATIVE COUNSEL'S DIGEST

AB 843, Nunez. Tax preparers.

Existing law requires a tax preparer to maintain a bond in favor of, and payable to, the people of the State of California, for each individual preparing tax returns for another person. Existing law requires a tax preparer to provide a customer with certain information in writing prior to rendering any tax preparation services. A willful violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer who advertises the availability of a refund anticipation loan from representing the loan as a client's actual refund. The bill would require a tax preparer that offers to facilitate, or who facilitates, a refund anticipation loan to a client to display a specified fee schedule. The bill would require a tax preparer that offers to facilitate a refund anticipation loan to provide the client with a specified written disclosure prior to the client's completion of the refund anticipation loan application. The bill would also require a tax preparer to provide the client with specified information, in either written or electronic form, prior to the client's consummation of the refund anticipation loan transaction.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 22251 of the Business and Professions Code is amended to read:

22251. For the purposes of this chapter, the following words have the following meanings:

(a) (1) Except as otherwise provided in paragraph (2), “tax preparer” includes:

(A) A person who, for a fee or for other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services. A person engaged in that activity shall be deemed to be a separate person for the purposes of this chapter, irrespective of affiliation with, or employment by, another tax preparer.

(B) A corporation, partnership, association, or other entity that has associated with it persons not exempted under Section 22258, which persons shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that holds itself out as offering those services or having that authority.

(2) Notwithstanding paragraph (1), “tax preparer” does not include an employee who, as part of the regular clerical duties of his or her employment, prepares his or her employer’s income, sales, or payroll tax returns.

(b) “Tax return” means a return, declaration, statement, refund claim, or other document required to be made or filed in connection with state or federal income taxes or state bank and corporation franchise taxes.

(c) An “approved curriculum provider,” for purposes of basic instruction as described in subdivision (a) of Section 22255, and continuing education as described in subdivision (b) of Section 22255, is one who has been approved by the council as defined in subdivision (d). A curriculum provider who is approved by the tax education council is exempt from Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code.

(d) “Council” means the California Tax Education Council that is a single organization made up of not more than one representative from each professional society, association, or other entity operating as a nonprofit corporation that chooses to participate in the council and that represents tax preparers, enrolled agents, attorneys, or certified public accountants with a

membership in California of at least 200 for the last three years, and not more than one representative from each for-profit tax preparation corporation that chooses to participate in the council and that has at least 200 employees and has been operating in California for the last three years. The council shall establish a process by which two individuals who are tax preparers pursuant to Section 22255 are appointed to the council with full voting privileges to serve terms as determined by the council, with their initial terms being served on a staggered basis. A person exempt from the requirements of this chapter pursuant to Section 22258 is not eligible for appointment to the council, other than an employee of an individual in an exempt category.

(e) “Client” means an individual for whom a tax preparer performs or agrees to perform tax preparation services.

(f) “Refund anticipation loan” means a loan, whether provided by the tax preparer or another entity, such as a financial institution, in anticipation of, and whose payment is secured by, a client’s federal or state income tax refund or by both.

(g) “Refund anticipation loan fee schedule” means a list or table of refund anticipation loan fees that includes three or more representative refund anticipation loan amounts. The schedule shall separately list each fee or charge imposed, as well as a total of all fees imposed, related to the making of a refund anticipation loan. The schedule shall also include, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the federal Truth in Lending Act (15 U.S.C. Sec. 1601 and following).

SEC. 2. Section 22253.1 is added to the Business and Professions Code, to read:

22253.1. (a) Any tax preparer who advertises the availability of a refund anticipation loan shall not directly or indirectly represent the loan as a client’s actual refund. Any advertisement that mentions a refund anticipation loan shall state conspicuously that it is a loan and that a fee or interest will be charged by the lending institution. The advertisement shall also disclose the name of the lending institution.

(b) Every tax preparer who offers to facilitate, or who facilitates, a refund anticipation loan to a client shall display a refund anticipation loan schedule showing the current fees for refund anticipation loans facilitated at the office, for the

electronic filing of the client's tax return, for setting up a refund account, and any other related activities necessary to receive a refund anticipation loan. The fee schedule shall also include a statement indicating that the client may have the tax return filed electronically without also obtaining a refund anticipation loan.

(c) The postings required by this section shall be made in not less than 28-point type on a document measuring not less than 16 by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where any tax preparer is offering to facilitate or facilitating a refund anticipation loan.

(d) (1) Prior to the client's completion of the refund anticipation loan application, a tax preparer that offers to facilitate a refund anticipation loan shall provide to the client a clear, written disclosure containing all of the following information:

(A) The refund anticipation loan fee schedule.

(B) That a refund anticipation loan is a loan and is not the client's actual income tax refund.

(C) That the taxpayer can file an income tax return electronically without applying for a refund anticipation loan.

(D) The average amount of time, according to the Internal Revenue Service, within which a taxpayer who does not obtain a refund anticipation loan can expect to receive a refund if the taxpayer's return is filed or mailed as follows:

(i) Filed electronically and the refund is deposited directly into the taxpayer's bank account or mailed to the taxpayer.

(ii) Mailed to the Internal Revenue Service and the refund is deposited directly into the taxpayer's bank account or mailed to the taxpayer.

(E) That the Internal Revenue Service does not guarantee that it will pay the full amount of the anticipated refund and it does not guarantee a specific date that a refund will be deposited into the taxpayer's bank account or mailed to the taxpayer.

(F) That the client is responsible for the repayment of the refund anticipation loan and the related fees in the event that the tax refund is not paid or paid in full.

(G) The estimated time within which the loan proceeds will be paid to the client if the loan is approved.

(H) The fee that will be charged, if any, if the client's loan is not approved.

(2) Prior to the client's consummation of the refund anticipation loan transaction, a tax preparer that facilitates a refund anticipation loan shall provide to the client, in either written or electronic form, the following information:

(A) The estimated total fees for obtaining the refund anticipation loan.

(B) The estimated annual percentage rate for the client's refund anticipation loan, using the guidelines established under the federal Truth in Lending Act (15 U.S.C. Sec. 1601 and following).

(C) A comparison of the various costs, fees, and finance charges, if applicable, associated with receiving a refund by mail or by direct deposit directly from the Internal Revenue Service, a refund anticipation loan, a refund anticipation check, or any other refund settlement options facilitated by the tax preparation service.

(e) This section shall comply with the language requirements set forth in Section 1632 of the Civil Code.

(f) Any tax preparer who offers to facilitate, or who facilitates, a refund anticipation loan may not engage in any of the following activities:

(1) Requiring a client to enter into a loan arrangement in order to complete a tax return.

(2) Misrepresenting a material factor or condition of a refund anticipation loan.

(3) Failing to process the application for a refund anticipation loan promptly after the client applies for the loan.

(4) Engaging in any transaction, practice, or course of business that operates a fraud upon any person in connection with a refund anticipation loan.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a

crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor